UNITED NATIONS **S**

Security Council

Distr.
GENERAL

S/1998/582
29 June 1998
ENGLISH
ORIGINAL: FRENCH

LETTER DATED 25 JUNE 1998 FROM THE PERMANENT REPRESENTATIVE OF THE DEMOCRATIC REPUBLIC OF THE CONGO TO THE UNITED NATIONS ADDRESSED TO THE SECRETARY-GENERAL

I have the honour to transmit herewith the copy of the official reply of my Government to the allegations contained in the report issued by the Commission charged with investigating alleged violations of human rights and of international humanitarian law in the territory of the Democratic Republic of the Congo (S/1998/581).

My Government would be grateful if you circulated its reply together with the report of the Investigative Commission.

(Signed) André MWAMBA KAPANGA
Ambassador
Permanent Representative

98-18447 (E) 290698

/...

Annex

DEMOCRATIC REPUBLIC OF THE CONGO

OBSERVATIONS OF THE GOVERNMENT OF THE DEMOCRATIC REPUBLIC OF THE CONGO WITH REGARD TO THE REPORT OF THE UNITED NATIONS MISSION ON THE ALLEGATIONS OF MASSACRES AND SERIOUS VIOLATIONS OF INTERNATIONAL HUMANITARIAN LAW IN THE DEMOCRATIC REPUBLIC OF THE CONGO

KINSHASA, 26 JUNE 1998

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INTRODUCTION

1. The Democratic Republic of the Congo is being charged by certain sectors of international public opinion alleging that units of the Alliance of Democratic Forces for the Liberation of the Congo (AFDL) have carried out massacres of Rwandan Hutu refugees. Those allegations are fuelling a widespread media campaign by certain non-governmental organizations.

2. Those frequent allusions to atrocities falsely attributed to the AFDL have led the United Nations High Commissioner for Human Rights to request the Special Rapporteur for the former Zaire, Mr. Roberto Garreton, appointed on 9 March 1994 by the Commission on Human Rights, to make another visit to the Democratic Republic of the Congo.

3. Upon completion of his mission, Mr. Garreton prepared a very controversial report. The Congolese Government and a number of human rights organizations have pointed out that the conclusions of his report reflected a large degree of partiality. He deliberately and completely failed to mention that the main factors which led to the tragedy that occurred in the eastern part of our country were criminal acts committed by the former regimes in the Great Lakes region.

4. From the outset and in keeping with the spirit of Security Council resolution 1161 (1998) of 9 April 1998, the Government of the Democratic Republic of the Congo had requested that the United Nations investigation should include the period prior to the war of liberation because it was a period characterized by numerous violations of human rights committed by the former Zairian Army (FAZ), the former Rwandan Army (FAR) and the Interahamwe militias.

5. Despite the differences between the parties, a compromise was struck, namely, to dispatch a new United Nations team to replace the one headed by Mr. Garreton. Having been consulted on the matter by the Secretary-General of the United Nations, the President of the Democratic Republic of the Congo, His Excellency Laurent-Désiré Kabila, agreed in principle and requested that a preparatory commission should establish the practical modalities of the investigation before the investigative mission proper began its work.

6. After discussions, the Preparatory Commission and the Congolese Government on 4 June 1997 signed a protocol of agreement concerning the conduct of the investigation of the alleged massacres and other violations of human rights. That legal instrument was intended to establish the mandate of the investigative mission and its composition and to delimit its jurisdiction in time and space.

7. Notwithstanding the signing of the protocol of agreement, the investigative mission has continually distinguished itself by violating the agreed provisions. The Government of the Democratic Republic of the Congo has protested against:

- failure of the mission to respect the agreed space and time period of the investigation;

- interference in the internal political affairs of the Congo;

- failure to respect the cultural values of the region being investigated;

- a deliberate attempt to instigate incidents inimical to the Government of the Democratic Republic of the Congo.

8. Despite this climate of suspicion and distrust, the mission conducted its investigations until another crisis precipitated termination of its mandate. It was a unilateral decision of the United Nations Secretary-General to withdraw the Investigative Team in the Democratic Republic of the Congo. It was a decision made casually in a press release issued on 17 April 1998. It was motivated by a series of obstacles created by the authorities despite the Government's repeated assurances that the mission would be permitted to do its work [sic].

9. The Secretary-General's mission submitted a report that reviews the justification for the Investigative Team, the obstacles encountered by the team, the results, the conclusions and the recommendations.

10. After a detailed examination of the United Nations report, the Democratic Republic of the Congo protests the violation by the United Nations of the rules governing the confidentiality of the report and by certain Powers which gave it wide publicity even before it was officially submitted to them. What is worse, the United Nations sent us a copy in English whereas the Democratic Republic of the Congo is registered with the United Nations as a French-speaking country. The Congolese Government regrets to have to state that:

- The report is merely an exact copy of the Garreton report, which it plagiarized;

- It is a dangerous document that, contrary to the ideals of international peace and security propagated by the United Nations, exacerbates the ethnic hatred between Hutu and Tutsi by oversimplifying the complex problems which plague the Great Lakes region;

- The report is politically motivated, its object being to camouflage the responsibilities of the Powers implicated in the genocide in Rwanda, specifically France, in Operation Turquoise. Thus, it represents an attempt to falsify history that tends to trivialize the word "genocide";

- The report is an attempt to upset the political stability of the Great Lakes region;

- The rumours collected after several investigations are based on samplings too small to be statistically viable, with the result that the document is not based on concrete facts.

11. A reading of the report clearly reveals many gaps, contradictions and untruths, both in substance and in form, as well as expressing contempt towards the Government and people of the Congo. Also, there are three stages in conventional investigative technique, namely, assembling the facts, sifting and interpreting the data and reaching conclusions. An examination of the report indicates that the first stage was bypassed so that the other two, which

logically stem from the first, presumably never took place. That being so, the Government simply rejects the conclusions of the report as being a collection of unfounded allegations.

12. In the pages which follow, we shall present a detailed analysis to support that conclusion.

I. THE GARRETON REPORT: PRINCIPAL SOURCE OF THE REPORT OF THE INVESTIGATIVE TEAM

13. The Investigative Team essentially relied on the report drafted by Mr. Garreton after completion of his preliminary investigation. At that time the Government of the Congo vigorously disputed the allegations contained in his report and rejected the document as a basis for the investigation. It justified its position as follows.

I.1. Mr. Garreton's partiality

14. It is important to note that the Congolese Government was never opposed to the principle of an objective investigation into the allegations of massacres and other violations of human rights and international humanitarian law.

15. However, the presence of Mr. Garreton on the Investigative Team was suspect because his neutrality was already in question. It will be seen from a reading of the report that Mr. Garreton made frequent references to the then Minister for Foreign Affairs, Mr. Kamanda wa Kamanda of the defunct Mobutu regime. Moreover, the tone and language of the Garreton report show that the author was not neutral.

16. Furthermore, it is especially curious to note that three years earlier the author of the special report on the human rights situation in Zaire was not neutral either. Unfortunately, no investigation on violations was ordered or conducted by the United Nations. Yet, after the inter-ethnic violence in Kivu and in Rwanda since 1993, particularly in the Masisi, a number of Congolese were massacred by the Zairian Army (FAZ).

I.2. The period being investigated

17. The Congolese Government has consistently requested that the investigation should cover the period beginning on 20 March 1993, the day the inter-ethnic violence backed by the Mobutu regime broke out. In the course of those events, tens of thousands of people were massacred and then thrown into mass graves scattered over several localities in Kivu.

18. The Congolese Government justified that position on the grounds that unless all those facts were brought to light the assignment of responsibility for the mass graves might reflect unfairly on the Alliance.

I.3. Mr. Garreton's mandate

19. The High Commissioner for Human Rights issued a press release in which he stated that "he was considering the possibility of sending human rights observers to eastern Zaire if the necessary guarantees were provided and the necessary funds were available. He added that he had asked the Special Rapporteur of the Commission on Human Rights on the Human Rights Situation in Zaire, Mr. Roberto Garreton, to investigate the allegations of massacres and to make recommendations to the Commission on Human Rights at its forthcoming session, which was to begin the following week" (E/CN.4/6/Add.2).

20. When he learned of his appointment, Mr. Garreton suggested to the High Commissioner that it would be inadvisable to send observers to the field, but that he was "in a position to undertake the field mission either immediately or at a time indicated to him". He added that he should be accompanied by "forensic experts or anthropologists and ballistic experts" of whom there could be no need at that stage of the preliminary investigation.

21. His suggestion was dismissed with the High Commissioner pointing out to Mr. Garreton that the intentions of the High Commissioner are and of the Security Council were limited for the moment to a merely preliminary investigation designed to ascertain whether the allegations of massacres of refugees were solid enough to justify an investigation involving all the necessary technical resources.

22. Nevertheless, in view of the conclusions of his report, Mr. Garreton clearly exceeded his mandate.

I.4. The actual conduct of the Garreton mission

23. Contrary to the promise to carry out the field mission, on pages 6 and 7 of his report (E/CN.4/98/65), the Special Rapporteur confirms that he was unable to visit the Democratic Republic of the Congo, although such a visit would have been quite helpful in giving him a more accurate picture of the situation and in particular, in enabling him to obtain the Government's comments ... The absence of such a visit does not disqualify a report from the legal point of view ... nor the seriousness, objectivity or veracity of its content. This was always the attitude of the Commission on Human Rights and the General Assembly.

24. This "in judicando" and inquisitorial approach is dangerous and clearly violates the adversarial principle recognized by all international legal human rights instruments. It deprives the Government of the Democratic Republic of the Congo of its right to make comments and to discuss the evidence. Where is the observance and respect of human rights invoked by certain organs of the United Nations now?

25. To crown it all, the report of the Special Rapporteur indicates that he remained sequestered in the city of Goma from 25 to 29 March 1997. His task was confined to questioning, without identifying, direct and indirect witnesses, persons close to the victims, exiles, non-governmental organization leaders, political parties, priests, pastors, journalists and lawyers, etc. ... whom he found very helpful in drafting his report. He adds that the testimony he heard

came mostly from people who were concealing their identity. However, it should be strongly emphasized that it is a cardinal doctrine of criminal law that the testimony of witnesses is the least reliable evidence there is. And all the experts in criminal law such as Maître Jacques Verges and Professors Bouzat and Pinatel agree on that point because, with the passage of time, human experience becomes confused and memories fade very quickly. Today, international criminal jurisdictions like the International Tribunal for Rwanda, which are experiencing delays in bringing to trial the perpetrators of genocide and other war crimes committed in Rwanda, acknowledge that such testimony as a means of establishing the facts is very fragile because neither the court nor the defence can force witnesses to corroborate the truth of their testimony. In addition, the risk of manipulation of certain witnesses by non-governmental organizations like the Association for the Protection of Human Rights (AZADHO), which has ties to certain Kinshasa political groups, and the pressures exerted upon the witnesses have the effect of casting doubt on their testimony.

26. Moreover, on page 6, the Special Rapporteur mentions as a source of his information certain non-governmental organizations whose legal status in the Democratic Republic of the Congo cannot be established. This applies to AZADHO, Association des cadres pénitentiaires, Collectif d'action pour le développement des driots de l'homme (CADDHOM), Groupe Lotus de Kisangani, etc. ... which have been operating thus far without acquiring the status of legal persons.

27. The report reveals, strangely enough, that the Special Rapporteur deliberately refrained from contacting and seeking information from the credible international humanitarian organizations that have been operating in the area since the beginning of the hostilities such as the International Committee of the Red Cross (ICRC), the Office of the United Nations High Commissioner for Refugees (UNHCR), Doctors without Borders (which in 1995 prepared a crushing report against HCR and the French-initiated "Operation turquoise"). Yet, the Special Rapporteur preferred to rely on statements, reports and press releases from the two political parties, UDPS and PANADI, despite the fact that he knows how hostile they are to the Government of the Democratic Republic of the Congo and to AFDL. His choice of those sources is enough to confirm his political designs and his partiality and the fact that the allegations contained in the report are pure fantasy.

28. His political and destabilizing intentions are also reflected in his conduct because apart from Goma (Democratic Republic of the Congo), the Special Rapporteur's report indicates that he just passed through the European capitals (Paris and Geneva) and the American capitals (Montreal, New York, Washington) for "various reasons" which actually were nothing less than to receive guidance on how to conduct the investigation so as to exonerate the real perpetrators of genocide, the massacres and other crimes committed in the Great Lakes region.

29. In that connection, an informed observer close to the United Nations Secretary-General asserts that Garreton goes far above and beyond his duties. He is naive and badly informed. He does not see himself as a Special Rapporteur. Instead of defending human rights, he is throwing fuel on the fire; he goes so far as to meddle in the running of the Government. In the circumstances, he can serve neither human rights nor peace in the region, where the situation is extremely tense. In addition, in his memorandum addressed to

the United Nations High Commissioner for Human Rights, the President of Campaign for Peace, Democracy and Development (CPDD) of Southern Kivu, Mr. Enoch S. Ruberangabo reproaches Mr. Roberto Garreton for having written his report after listening to one side only and for indulging in racism, a sign of insecurity (Jeune Afrique Economie, 1-14 June 1998, p. 114).

30. Furthermore, charges as serious as massacre, genocide, murder, etc. ... based solely on testimony can have no legal validity both from the point of view of prevailing doctrine and the jurisprudence established by international criminal jurisdictions, particularly since they are not corroborated by irrefutable experts and they clearly violate the adversarial principle. How could it be otherwise since a close examination of his report shows that the Special Rapporteur has not demonstrated with sufficiency in law either premeditation or a concerted and prepared plot to exterminate or totally destroy any ethnic or political group (in this case the Hutu refugees by the forces of AFDL) which are the main components of murder and genocide. That is why, in recognition of the limitations on his ability to establish the facts, the Special Rapporteur recommended recourse to anthropologists and forensic experts.

II. The mission of the Investigative Team headed by Koffi Amega

II.1. Alleged obstacles to the conduct of the Secretary-General's investigative mission

31. The Investigative Team makes the unwarranted allegation that some of its members suffered vexations and that obstacles were deliberately created by the Government of the Democratic Republic of the Congo to prevent the Team from fulfilling its mandate (conclusions of the report, para. 73).

32. In addition, it claims that despite promises often reiterated, the Government has never given the mission the freedom to carry out its investigations in the Democratic Republic of the Congo. It states that for the Government the present profound gulf between the Democratic Republic of the Congo and the United Nations, which the Government accuses of having been at the origin of all its problems since independence in 1960, is due to the concern for national independence and dignity, which are the Government's leitmotifs; that the Government's sometimes hostile attitude to certain international humanitarian organizations is symptomatic of the situation; and that that attitude is consistent with the Government's refusal to fully cooperate with the Team (conclusions of the report, para. 75).

33. Curiously, in common with the Garreton report, the report on the Amega mission does not name any humanitarian organization that has been the victim of the alleged hostility. This reflects a deliberate attempt to tarnish the good image of the new Government of the Democratic Republic of the Congo.

34. The principle of national sovereignty and dignity of the Congolese people is reaffirmed in the Charter of the United Nations and other international legal instruments. The Government of the Democratic Republic of the Congo, which has always expressed its willingness to cooperate with the United Nations and all peace-loving and justice-loving countries, on the basis of the principles of the Charter, has no intention of going along with plans that ignore those

principles. It reaffirms its habitual readiness to collaborate with and support all humanitarian organizations operating on a legal basis and within the limits of their mandate, with respect for the dignity of the Congolese people. For example, several humanitarian organizations working in the Democratic Republic of the Congo (such as UNHCR, ICRC and WFP) have enjoyed and continue to enjoy a number of entitlements, including exemption from certain aeronautical charges for aircraft assigned to their humanitarian missions, etc.

II.1.1. Alleged obstacles at Mbandaka

35. With regard to the alleged obstacles at Mbandaka, it should be pointed out first of all that the Investigative Team had unilaterally decided to undertake activities on the ground in that part of the Republic. The subsequent protest march to which the Investigative Team refers was only an expression of complaint by Congolese victims regarding discriminatory treatment at the hands of members of the Team, who were showing greater consideration to supposed Rwandan refugees than to the locals who were victims too. The members of the Team took it upon themselves, in violation of the draft agreement of 4 July 1997, contrary to the terms of the press release issued by the United States Ambassador to the United Nations on 25 October 1997 and in violation of local customs, to desecrate a cemetery in Wendji-Sicly, claiming that it was a mass grave where supposed Rwandan refugees were buried. They exhumed the remains of a traditional chief and a child.

II.1.2. Alleged obstacles at Goma

36. In connection with the Goma incident, it is important to point out that, after working for 13 days, Mr. Christopher Harland went to neighbouring Rwanda without authorization from the Congolese Government, whose duty it is to ensure his safety and that of his colleagues, in accordance with agreements between the Government of the Democratic Republic of the Congo and the Investigative Team. In order to leave the province of North Kivu, Mr. Harland manipulated the security services of our two countries by showing his United Nations laissez-passer (No. 52805) on the Congolese side of the border and his Canadian passport (BC 051952) on the Rwandese side. On examining the Canadian passport presented, the Rwandan immigration service noted that there was nothing in it to indicate that Mr. Harland had crossed the Congolese border. Faced with that irregularity which he did not explain, Rwanda sent him back to the Democratic Republic of the Congo so that he could observe the normal procedures for crossing the border. When he reached the Congolese side of the border, Mr. Harland presented both passports to the immigration service. His use - sometimes alternately, sometimes simultaneously - of two different travel documents caught the attention of our border services. Unable to determine whether he was an investigator or a tourist, our officers reported the matter to their superiors, who asked Mr. Harland to travel to Kinshasa in order to regularize his situation. Upon his arrival at Ndjili airport, Mr. Harland repeated the same mistake by presenting both passports to our security services. That aroused their suspicions, and they asked him to open his luggage. His refusal to do so caused him to waste a lot of time at the airport, until higher officials intervened. Contrary to what members of the United Nations Investigative Team claim, none of his documents were read or photocopied. The few items that were searched in his presence were opened and closed by him.

37. None of these facts show in any way that the Government of the Democratic Republic of the Congo created any obstacle to hinder the Investigative Team. The good faith of the head of State and Government of the Democratic Republic of the Congo cannot be called into question. Moreover, in his statement during a press conference on 13 October 1997 concerning the refugee situation in the Democratic Republic of the Congo, the head of State reiterated his determination and that of his Government to see the investigation proceed normally with a view to establishing the truth regarding these matters.

II.2. Limitations of the mission in the light of the mandate of the Investigative Team

38. Resolution 1997/58, adopted by the Commission on Human Rights after the Garreton report on the situation of human rights in Zaire, is the legal instrument providing the justification for sending investigative missions on matters falling within their respective purviews.

39. It should be noted that the advance team for the investigative mission dispatched by the Office of the United Nations High Commissioner for Human Rights and the Government of the Democratic Republic of the Congo did not reach an agreement concerning the period to be covered by the investigation. For the United Nations side, the purpose, according to resolution 1997/58, was to "investigate allegations of massacres and other issues affecting human rights which arise from the situation prevailing in eastern Zaire since September 1996", whereas, for the Government, competence ratione temporis was to extend from 20 March 1993 to 17 May 1997. As defined by the aforementioned resolution, the mandate of the United Nations Investigative Team carried within it the seeds of iniquity.

40. The interpretation of the attitude of some members of the Team in setting September 1996 as the starting date for their mission is that they intended to draw broad inspiration from the Garreton report to the General Assembly of 30 June 1997 and to the Commission at its fifty-fourth session.

41. This seems to be confirmed by the fact that the conclusions of the Garreton report (E/CN.4/1997/6/Add.2, p. 15, para. 47) recommended that reference should be made to the mandate entrusted to him, namely that "he was not requested to provide a report on the overall human rights situation in Zaire, nor in the region occupied by the rebels, but only on the allegations of massacres of Hutu refugees".

42. Despite the letter dated 15 July 1997 from the Secretary-General of the United Nations stipulating 1 March 1993 as the starting date for the investigation and indicating that the report should be submitted to the General Assembly of the United Nations not later than December 1997, Mr. Koffi Amega and his team gave an extensive and biased interpretation to the effect that the investigation would end only when the report was completed. This runs counter to the aforementioned instructions and to the concern of the Government of the Democratic Republic of the Congo to see the investigation limited in time and space according to the terms agreed by the two parties.

43. The injustice and iniquity appear clearly in the findings, conclusions and recommendations in that they are silent on the exact and irrefutable circumstances and on the immediate and remote causes of the presence on the soil of the Democratic Republic of the Congo of armed bands and armed bandits (former Rwandan Army soldiers and Interahamwe militiamen), who were wrongly described as refugees. This shortcoming is even more glaring when one considers that from beginning to end the report is silent on the circumstances surrounding the death of President Habyarimana on 6 April 1994, silent on "Opération Turquoise", initiated and launched by France on 22 June 1994 (whose official goal was to stop the genocide, but whose main effect was to prevent the collapse of Hutu power), and also silent on the real or supposed reasons for the refusal by the international community and UNHCR to separate the real armed bandits (former Rwandan Army soldiers, Interahamwe and other mercenaries) from the true refugees.

44. Moreover, it was not by mere chance that the United Nations selected Mr. Atsu Koffi Amega as the head of the Investigative Team when one considers that on several occasions he was Minister and Ambassador of the President of Togo, Mr. Eyadema, and accredited to the Government of President Mobutu. He therefore could not enjoy any presumption of neutrality in the conflict between the present authorities in the Democratic Republic of the Congo and the deposed Zairian dictator, whose friendship with his Togolese counterpart from the same French mould does not have to be proven. Moreover, in its letter of 4 September 1997, the Government had called his credibility into question.

II.3. Methods of investigation of the Investigative Team

45. The Amega report is subject to criticism as much in terms of its premises as in terms of the investigative methods aimed at establishing the facts, particularly with regard to mass graves and the scientific certification of causes and time of death of refugees and other displaced Congolese persons.

46. As far as the premises are concerned, the Amega report is based on the Garreton report as a working document, though the latter was irrational and void of factual argumentation. Furthermore, this concocted report involves a great deal of plagiarism. It is regrettable therefore that at its fifty-fourth session, the Commission on Human Rights placed faith in Mr. Garreton's accusations, even though he admitted that he had not done any on-site investigations. The Commission's resolution of 28 April 1998 reflects misgivings on Mr. Garreton's quibbles when it confines itself to expressing concern about the disappearance between 1994 and 1997 of refugees who have not yet been accounted for. At the same time, no serious investigation has been undertaken for fear of implicating the real perpetrators of the genocide and their accomplices, at least for the period March 1993 to September 1996. The fact that the establishment of AFDL took place only in October 1996 seems to confirm this.

47. What is more, another defect of the Amega mission was that it resorted to the same investigative methods, namely testimony from persons who remain anonymous under the pretext that their lives have to be protected. This method of investigation, already used by the Special Rapporteur, Mr. Robert Garreton, has already been subject to criticism.

48. In addition, the aforementioned resolution of the Commission on Human Rights notes that "the Secretary-General's Investigative Team will prepare a report based on its work to date within the Democratic Republic of the Congo and on such other sources as are available to it". This mission has not carried out any real work on the alleged locations of massacres or mass graves in the Democratic Republic of the Congo, for it claims that it was prevented from doing so. It was physically impossible for it to carry out an investigation in one month into massacres that took place between 1 March 1993 and 1997.

49. Another indication of the inadequacy of the Amega report is the fact that although investigations are supposed to have been carried out for the period between March 1993 and October 1994, the report says nothing about the period between April and July 1994. The chronology of events in Rwanda and the eastern region of the Democratic Republic of the Congo demonstrates the following: on 6 April 1994, there was an attack on President Habyarimana's aircraft (the circumstances of which have not yet been elucidated), together with civil war in Rwanda and the beginning of genocide of Tutsis. Mr. Jacques Foccard, special adviser to the French President with responsibility for Africa, went to Gbadolite to meet Mr. Mobutu in order to organize "resistance" around Goma. On 22 June, France, the champion of the right of humanitarian intervention, began the infamous and criminal "Opération Turquoise", whose official goal was to stop the genocide, but whose main effect was to prevent the collapse of Hutu power. Subsequently, in July 1994, there was an exodus of over a million Rwandans, escorted by military personnel (former Rwandan Army) and militiamen (Interahamwe) of the Habyarimana regime, towards northern and southern Kivu, as well as the installation of refugee camps (see Dossiers noirs de la politique africaine de la France, No. 9: France-Zaire-Congo 1960-1997; Echec des mercenaires, AGIR ICI-SURVIE, p. 172). There was a deliberate decision not to subject this period to any in-depth investigation by the Amega mission, for that was likely to implicate France in crimes committed in Rwanda and the eastern part of the Democratic Republic of the Congo, and this in turn would have carried the risk not only of endangering Franco-African "alliances", but also of distorting the political goals pursued by the investigation.

50. This is precisely one of the greatest criticisms of the Investigative Team: its failure to understand that the remote and immediate causes of the crimes now being complained of also result from the hypocrisy of the international community, which was unable to separate the "genuine Rwandan refugees" from the perpetrators of genocide, the armed bandits (ex-FAR and Hutu Interahamwe militia) who took them hostage; on several occasions, these groups massacred Rwandan refugees (from among the civilian population) by way of reprisals against those who were attempting to escape from their clutches, as the report of the Amega Commission also noted in May 1998 (see Conclusions and recommendations, para. 85). The same is true of the members of the former Zairian Army (idem, para. 84).

51. This is all the more true in that in its various recommendations the report, which moreover acknowledges limitations and inadequacies in its conclusions because it was unable to complete all of its investigations (see Conclusions and recommendations, para. 76), recommends, in the event that the option of continuing the investigations were to be taken up, focusing on:

(a) Individual and State responsibility of the States for massacres and other serious human rights violations occurring in North and South Kivu beginning in March 1993;

(b) The collusion of the Rwandan Government in the human rights violations in the refugee camps during the period July 1994 to October 1996;

(c) The direct participation by the Rwandese Patriotic Army in the military operations by the insurgent forces (read "AFDL") at the start of the war of liberation, beginning in October 1996;

(d) The involvement and participation of foreign troops, including troops from neighbouring countries and mercenaries, in serious violations of human rights and international humanitarian law;

(e) The deliberate intention of massacring Hutus, in particular the massacres of Zairian Hutus in North and South Kivu and the massacres of Rwandan Hutus in the interior of Zaire in October 1996 (Recommendation 7).

It is here that the really harmful intent becomes apparent, in that there is an attempt to be able to set aside or omit all the acts committed from April to July 1994, misdeeds which are attributable to France, in that there is a desire to protect the real guilty parties.

52. Next, why draw legal conclusions while admitting to not having established all the facts in a manner sufficient in law? Jurists are in agreement that there is absence of foundation when consequences are drawn from facts that have not been established. Or, to spell it out, there is a violation of the law through absence of factual foundation (this is the great defect of the Garreton Report and the Amega Mission). In other words, conclusions drawn from facts that have not been established are devoid of legal value. The alleged obstacles of the Government of the Democratic Republic of the Congo to the investigations of the Investigative Mission headed by Koffi Amega are thus understandable. The Mission is condemnatory, and wants its report to be published so as to discredit the established authorities in the eyes of international public opinion.

III. CRITICAL ANALYSIS OF THE UNITED NATIONS REPORT

III.1 Problems of the application of humanitarian law during the war of liberation

53. It cannot today be denied that the presence in the Democratic Republic of the Congo of large numbers of Rwandan refugees intermingled with armed bandits from the Rwandan Army (FAR) and Hutu Interahamwe militias previously armed by the former regime and the French soldiers of Operation Turquoise raised many problems whose legal consequences are irrefutable.

54. In its issue No. 1947, for 5 to 11 May 1998, the weekly Jeune Afrique, with "New revelations on the fall of Mobutu" as its main headline, noted: "Mahele, like Likulia, was indeed not unaware that from 1994 to 1996 generals very close to Mobutu had, for their greater profit, organized the resale of the arms seized from the Hutu soldiers of the former Rwandan Army who had sought refuge in Kivu

(...). The Auditor General of the Zairian Army, Colonel Abongo, had at the time conducted an internal inquiry into this scandal which concluded that these generals were directly responsible. The conclusions were immediately suppressed by Mobutu."

55. Under these circumstances, the question arises of the application to these refugees of the provisions of the Convention relating to the Status of Refugees of 28 July 1951 and the Geneva Conventions of 12 August 1949 and their additional protocols.

III.1.1. The application of the Convention relating to the Status of Refugees of 28 July 1951

56. It is true that the Convention relating to the Status of Refugees of 28 July 1951 applies, subject to the exceptions it specifies, to all refugees. Under the terms of article 1.F of the Convention, "The provisions of this Convention shall not apply to any person with respect to whom there are serious reasons for considering that:

> "(a) he has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
>
> "(b) he has committed a serious non-political crime outside the country of refuge prior to his admission to that country as a refugee;
>
> "(c) he has been guilty of acts contrary to the purposes and principles of the United Nations."

57. In addition, the OAU Convention governing the specific aspects of refugee problems in Africa, requires any refugee to abstain from any subversive activities against any member State of OAU. In this respect, the States members of OAU, like the Democratic Republic of the Congo, have also undertaken to prohibit refugees residing in their respective territories from attacking any State member of OAU, by any activity likely to cause tension between member States, in particular by use of arms, through the press or by radio.

58. In the case in question, it is now established that there was deliberate confusion in classifying the Rwandan exiles. The armed bandits (the ex-FAR and the Interahamwe militias) and the perpetrators of genocide could not, under the terms of the Convention of 28 July 1951 and its additional protocols, be eligible for the status of refugees.

59. Contrary to what the Special Rapporteur and the Investigative Mission assert in relation to the situation in the refugee camps, the refusal of the international community to separate the perpetrators of genocide and other acts of intimidation of the innocent and to demilitarize the refugee camps placed the provinces of North and South Kivu in a state of famine and unprecedented insecurity (pillage, rapes, cannibalism, etc.) which was the doing of the armed Rwandan perpetrators of genocide (ex-FAR and Interahamwe). The inhuman behaviour of the armed bandits and their accomplices led to many losses of human life even among the Congolese, mass displacements of Congolese, the emergence of

certain epidemics and communicable diseases such as diarrhoeal diseases, measles, etc. and the indescribable consequences of a tragedy that had taken place in another country.

60. In addition, the Democratic Republic of the Congo is unjustly accused in the report of the disappearance in May 1997 of about 180,000 Rwandan refugees, although no reliable statistics have been prepared by UNHCR in this respect, either in the refugee camps or in the countryside where the majority of them were roaming in absolute insecurity, totally abandoned by the humanitarian organizations.

61. This state of insecurity, which was not without its consequences for the application of humanitarian law, cannot be attributed to the liberation forces of the AFDL.

III.1.2. The application of humanitarian law in the "refugee" camps and during the war of liberation

62. It is appropriate to recall that the presence among the Rwandan refugees of armed bandits (the ex-FAR, Hutu Interahamwe militias and the other perpetrators of the acts of intimidation) and the refusal by the French troops of Operation Turquoise and by UNHCR to separate them raised at the level of humanitarian law one of the aspects of the war of liberation, namely the definition of legitimate targets for attack and the imperative requirements of the military and security operations.

63. The report of the Special Rapporteur denounces to this end the attacks said to have been carried out against the camps and the blockading of humanitarian assistance, which are said to have been mentioned as methods of extermination. He goes on that "Humanitarian assistance to the refugees, although not completely blocked, encountered serious difficulties, such as denial of access for days on end, restriction to certain times, etc. The Government's decision to send AFDL troops to the Shabunda camps (Sud-Kivu) on the pretext of monitoring the repatriation of refugees was a source of concern", which is said to have led the author of the report and the Rapporteur on extrajudicial, summary or arbitrary executions to ask the High Commissioner for Refugees to intervene. He goes on that "UNHCR notified the rapporteurs of the steps taken, which ultimately proved effective".

64. This simplistic way of looking at things indicates ignorance or a superficial reading of the provisions of the 1949 Geneva Conventions and their Additional Protocols, which not only admit or permit consideration of material or circumstantial limitations in the application of humanitarian law.

65. Thus, many provisions contain formulas such as "if circumstances allow", "to the extent that the requirements of military operations permit", "in so far as military considerations permit", and "subject to temporary and exceptional measures imposed for urgent reasons of security".

66. By way of illustration, article 55 of the Geneva Convention of 12 August 1949 relative to the Protection of Civilian Persons in Time of War provides that: "The Protecting Power shall, at any time, be at liberty to verify the

state of the food and medical supplies in occupied territories, except where temporary restrictions are made necessary by imperative military requirements." Article 63 adds: "Subject to temporary and exceptional measures imposed for urgent reasons of security by the Occupying Power: (a) recognized National Red Cross ... Societies shall be able to pursue their activities in accordance with Red Cross principles, as defined by the International Red Cross Conferences."

67. As is apparent, not only do these provisions invalidate the arguments put forward in the report, they also sufficiently demonstrate the legitimacy of certain security and safety measures that were taken in the refugee camps and elsewhere during the war of liberation because of the danger constituted by the presence among the refugees of armed members of the ex-FAR, the Hutu Interahamwe militias and the Rwandan perpetrators of genocide, inter alia the monitoring of the distribution of foodstuffs and medicines and the organization of voluntary repatriation coordinated by UNHCR. It was in no way the Government's intention to prevent the delivery of humanitarian aid, still less was there any desire to engage in extermination or summary or extrajudicial execution as maintained in the Garreton report.

68. Moreover, this lack of arguments on the level of the principles of humanitarian law provides sufficient proof that this law did not work in favour of the now well-established political aims on the part of the Special Rapporteur and the Investigative Team. This is all the more pervasive in that instead of confining himself to "a merely preliminary investigation designed to ascertain whether the allegations of massacres of refugees were solid enough to justify an investigation involving all the necessary technical resources", the Special Rapporteur has set himself up as a full-fledged "international fact-finding commission" as provided for by the 1949 Geneva Conventions. The attacks on the refugee camps and other isolated cases of massacres were moreover the work of the armed bandits (the ex-FAR and Hutu Interahamwe extremist militias) who took the refugees hostage and used them as human shields in order to pursue their diabolical plan and alarm international public opinion in favour of military intervention by the United Nations. The overzealousness shown by France in this respect is illustrative. Furthermore, the attempt to maintain the argument of a double genocide in Rwanda is now rejected by the French in the context of the Parliamentary Commission of Inquiry.

III.2. Evaluation of the results

69. The Investigative Team distinguished three categories of source for the investigations, namely, the Democratic Republic of the Congo, neighbouring countries and other sources, including local and foreign non-governmental organizations, journalists and diplomats.

70. In its report, the Investigative Team recognized that the number of testimonies obtained during its 35 weeks in the Democratic Republic of the Congo was very small. In fact testimony was provided by fewer than 20 people in Goma and Mbandaka respectively, and in Kinshasa the number was under 10. The Government noted that most witnesses in Mbandaka spoke of the rapes and violence committed by the Rwandan Hutus as they fled, not of massacres perpetrated by the AFDL troops.

71. Since our Government has made an effort to integrate the former members of FAZ, even when they are mentioned, the investigators made no effort to interview any of them. The legitimate demonstrations by the Congolese people in Kinshasa or Mbandaka were perceived by the investigators as Government-orchestrated obstruction.

72. The Congolese Government rejects the Investigative Team's findings that a deliberate effort was made to obstruct it. Indeed it seems clear that the Team, instead of proceeding to gather data in the field, contented itself with reports from non-governmental organizations and other documentary sources in hotels instead of investigating in the field. Statistically speaking, how is it possible to interpret findings based on a sample of 20 and 10 out of a population of 300,000 and 6 million inhabitants for the cities of Goma and Kinshasa respectively? The United Nations investigative mission appears not to have heard of an elementary rule of statistics, namely, that a sample must be representative. We, for our part, believe that all the inhabitants of the Democratic Republic of the Congo (45 million people) and the refugees who lived for a while in the Democratic Republic of the Congo (1 million people) are part of the target population, for they lived through the events. However, the mission contacted fewer than 200 people. Unless the mission determined other criteria which it has kept to itself, the Government believes that this sample is not representative and this amply proves that the Team made no effort to verify the allegations of massacres and of human rights violations.

73. Moreover, the team of experts was supposed to determine the number of people who were buried in the mass grave that was examined and to determine precisely where the bodies might have been taken, before drawing any conclusion.

74. In visiting witnesses in the neighbouring countries, the Team obtained testimony only from Rwandan Hutu refugees who were clearly not impartial in the matter. It was only natural, under the circumstances, that the Hutu refugees should attribute all the violence to the AFDL armed forces.

75. Finally, the Investigative Team was not in a position to note the points where the various sources contacted converged and where they diverged.

76. In conclusion, it is clear both from the investigators' report and from the Government's comments that the Investigative Team did not conduct a detailed investigation in Mbandaka and Goma. It is strange to see that the Team ventures, notwithstanding, to formulate conclusions - who knows on the basis of what convincing data gathered in the field - particularly since in its own report it confesses that it was not possible to confirm or disprove most of the allegations made concerning serious violations of human rights and humanitarian law. However, the Congolese Government has the following criticisms to make of these conclusions.

III.3. Evaluation of the conclusions of the Investigative Team

III.3.1. Failure of the Government of the Democratic Republic of the Congo to ensure conditions necessary for the successful completion of the investigation

77. (73) Contrary to the assertions of the Investigative Team, the Government of the Democratic Republic of the Congo was completely open to the investigative mission ordered by the Secretary-General of the United Nations. There was no other alternative, particularly since, for the Government, this mission was an opportunity to focus national and international public opinion once and for all on the so-called massacres attributed to the AFDL troops. Under the circumstances, the Government could not afford to obstruct the investigation. The fact that the Government set conditions precisely to achieve that end was wrongly interpreted by the Investigative Team as a sign of bad faith on the part of the Government.

78. (74) The desire expressed by the head of State and certain members of the government team of the Democratic Republic of the Congo that the Team should be entirely free to carry out its work without any interference throughout the country, was sincere. The Government made arrangements to that effect. However, that wish, which was expressed and acted on, did not authorize the commission to disregard the sovereignty of the Democratic Republic of the Congo and the practices and customs that its people held dear. Thus, whenever the mission exceeded its powers it was met with legitimate resistance on the part of the people. In other words, it is the mission itself which created obstacles for itself.

79. (75) In the view of the Government of the Democratic Republic of the Congo, there is no profound gulf between the Democratic Republic of the Congo and the United Nations. Although it is a member of the United Nations, the Democratic Republic of the Congo nevertheless remains free to express its disapproval of the double standards which that organization applies to it. The unfriendly attitude of the Congolese people to certain humanitarian organizations is simply a consequence of the contacts which those organizations have with the enemies of the liberation struggle waged by the AFDL forces. Indeed, during the war of liberation, weapons and instruments of war intended for the enemies of AFDL were seized on more than one occasion in aircraft and vehicles belonging to these organizations. The Government could not tolerate their hiding behind the label of humanitarian organization in order to engage in activities which have nothing to do with their mission. The proof of this is that the Democratic Republic of the Congo has always had good relations with the other United Nations agencies such as UNDP, FAO, ILO, WFP and WHO, all of which operate in its territory in accordance with their mission without getting involved in politics. Since the officials of United Nations agencies are not angels, the fact that the Government denounces abuses they commit must not be interpreted as a refusal to cooperate with the United Nations.

80. (76) It is curious to note that the Team reached conclusions even though it confessed that it was not possible to confirm or disprove most of the allegations that had been made concerning serious violations of human rights and humanitarian law. However, in the absence of any proof, these conclusions

cannot be binding upon the Democratic Republic of the Congo or the AFDL forces because of the saying "actori incumbit probatio", that is to say, he who makes an accusation must be able to substantiate it.

81. Moreover, the team could not base its conclusions on a small number of sources which, in most cases, were the alleged victims themselves. Indeed, such information coming, as it does, from persons directly concerned is not sufficient to substantiate an accusation. As the team itself states, it should be corroborated by testimony of impartial witnesses and forensic evidence in order to arrive at a more complete and accurate understanding of what happened during the five years covered by the investigation. For that reason, the team should have refrained from formulating any conclusion until it was sure of the impartiality, objectivity and evidence of a large number of tallying testimonies concerning the charges against the Democratic Republic of the Congo or the AFDL forces. It follows that, in the view of the Democratic Republic of the Congo, the following conclusions are simply unsubstantiated allegations which reflect the views of the Team alone; accordingly, the Team should apply the saying "in dubio pro deo", in other words, when there is a doubt, the doubt benefits the accused.

III.3.2. Events from March 1993 to October 1994

82. (77) The Team's inability to draw any conclusions and, in particular, to establish the identity of those responsible does not enlighten the authorities to whom the report is addressed.

83. (78 to 79) The position of the Government of the Democratic Republic of the Congo has always been that, mixed in with the Rwandan refugees were the persons who had been responsible for the genocide, armed bandits (former members of FAR and the extremist Hutu militia known as Interahamwe) who were holding the refugees hostage; this position is gradually being confirmed. The attacks are simply the consequence of the genocide committed in Rwanda since April 1994 which the United Nations was unable to prevent even though it had been fully informed of what was happening by the Department of Peacekeeping Operations.

84. However, it is surprising to see that the Investigative Team deliberately refrained from drawing attention to the tragic humanitarian consequences of the famous Operation Turquoise. For, according to the "Dossiers Noirs de la Politique Africaine de la France" (op. cit. p. 56), despite the obstacle of the cohabitation (between Mitterand and the Right), Operation Turquoise won all the more support among Parisian decision makers since one of its goals was to demonstrate how indispensable Mobutu was. The deployment of a military-humanitarian mission around Goma was supposed to demonstrate this. Afterwards, Mobutu would be able to assert his "right to rebirth", and the alliance between the two systems, Mobutuism and Franceafrica, which had become worn by their excesses and which was rapidly losing momentum, would again be sealed. Strangely enough, instead of clearly establishing responsibilities, the investigative mission concluded that it did not know who was responsible for this tragedy. It is up to the international community to draw its own conclusions about the credibility, competence and qualifications of the investigators sent by the United Nations.

III.3.3. Events occurring in October and November 1996

85. (80-85) The conclusions of the Investigative Team contain inadmissible contradictions which call for terminological clarification. Firstly, the Investigative Team begins by noting - and this is now clearly established - that the population of the various refugee camps included both real refugees (unarmed civilians) and armed bandits (the Forces Armées Rwandaises and the Interahamwe militia), who took the real refugees hostage and used them as a human shield. Strangely enough the investigative mission condemned the attacks on the refugee camps and deplored the loss of human life and the large-scale displacement of refugees, some of whom returned to Rwanda whereas others fled into the interior of "Zaire", where many were hunted down and killed. It is simply inadmissible to defend one thing and its opposite at one and the same time.

86. Indeed, what the Investigative Team ignores or pretends to ignore is that the assistance provided (by France) to eastern Zaire was estimated (according to Human Rights Watch/Africa (HRWA): Zaire, transition, war and human rights, 04/97, p. 64) at a total of $2.5 billion, a little more than $1 million per year, almost the equivalent of Rwanda's GNP. Much of that money was diverted: first by Zairians, for the general responsible for supplying the camps was none other than Mobutu's brother-in-law (according to Braeckman, the United Nations criticized Zaire for having supported the Hutu militiamen, Le Soir of 7 November 1996), then by Hutu Power, which controlled the distribution of food, overestimating the troops and underfeeding part of the civilian refugees. According to the report of a commission of enquiry (report of 28 October 1996 of the commission on the delivery of arms in the Great Lakes region in violation of the embargo of 17 May 1993), the militia war effort had been financed in part by the sale of humanitarian aid goods (Dossiers Noirs de la Politique Africaine de la France, op. cit., p. 68).

87. Moreover, a report published in May 1995 by Human Rights Watch (HRW/A. Rwanda/Zaire: Rearmament in impunity, international support for the perpetrators of the Rwandan genocide of May 1995) was already enlightening on the subject of French and Zairian involvement on the side of Hutu Power, inter alia, through French deliveries of artillery, machine-guns, assault rifles and munitions to the perpetrators of the genocide in action in May and June 1994. In addition, Amnesty International confirmed that weekly arms deliveries to Hutu Power via Goma, on Tuesdays at 11 p.m. local time, continued until mid-May 1995 (Amnesty International, Arming the Perpetrators of the Genocide, 13/6/1995, AFR 02/1495, p. 4).

88. Moreover, the United Nations commission of inquiry noted in October 1996 that the militia and new recruits were undergoing intensive training with a view to reconquering Rwanda (above-mentioned report of the United Nations commission on the delivery of arms).

89. This aside, which speaks volumes, should make it possible to enlighten the United Nations and should make it possible to understand certain opinions and findings of the Investigative Team. The latter confesses that soldiers of the former FAR and refugee Interahamwe militia attacked the refugee camps during the period October and November 1996, looting and killing the unarmed civilians. That was part of their concerted scheme and plan.

90. The soldiers of the former FAZ behaved in the same way. This endorses the position consistently maintained by the Government of the Democratic Republic of the Congo, that armed bandits (former Rwandan Army (FAR), former FAZ and the Interahamwe militias) carried out mass killings in the refugee camps and in some provinces in the eastern part of the country (North and South Kivu) and in the western part (Mbandaka and the vicinity of Wendji in Equateur Province).

91. However, nobody can fail to be aware that some of the murders of Hutu refugees were committed by armed bandits (former FAR, former FAZ and Interahamwe militias) who used them as a human shield and killed them in retaliation for attempting to escape their control. This also happened to some refugees who would not agree to cross the Congo river with these armed bandits who were fleeing to Congo-Brazzaville, and who were massacred and left behind by way of retaliation. Other massacres were committed at Kenge by members of the former FAZ and the former FAR, assisted by UNITA troops. Murders like these were committed every time in advance of the operations, and the international community never reacted because, as far as the Congolese victims were concerned, the Investigative Team actually dealt only with the alleged massacres of the Rwandan Hutu refugees. Sometimes it was soldiers of the former FAZ, widely known for their notorious lack of discipline and their abuses, who carried out mass executions, by way of retaliation, among civilians who welcomed the arrival of AFDL troops. Even Mrs. Sadako Ogata, the United Nations High Commissioner for Refugees, has admitted that the former FAR and the Interahamwe militias used the (civilian) refugees as a human shield.

92. As the Government of the Democratic Republic of the Congo has previously stated in connection with the practical difficulties of applying humanitarian law and the 1951 Convention relating to the Status of Refugees, it is now established that in the conclusions of the Investigative Team there was a deliberate confusion in the definition of "Rwandan refugees or exiles". In this case, according to the Convention of 28 July 1951 and its Protocols, and the Organization of African Unity (OAU) Convention which governs certain specific aspects of the refugee problem in Africa, with the exception of "unarmed Rwandan refugees", armed bandits (former FAR, Interahamwe militias and extremists and other genocidal killers) cannot be eligible for refugee status, because their campaign of destabilization and armed subversion against Rwanda and other countries in the subregion is sufficiently well-established.

III.3.4. Events from December 1996 to May 1997

93. (86) The statement is gratuitous and is not borne out by concrete facts. Moreover, in paragraph 42 of the annexes, the Commission acknowledges the spontaneous return of civilian refugees, estimated to number around 600,000 people. The Commission has deliberately omitted to mention the fact that the armed elements in the refugee camps inside the country were still putting up fierce resistance to the AFDL forces. Given that the refugees were being assisted by international agencies financed by UNHCR, and that these headcounts were carried out on a regular basis, the Commission ought to spell out how many people in the camps were armed and how many were not. The Commission deliberately makes no mention of the number of refugees who were repatriated under UNHCR auspices, using the Bukavu border crossing. Thus it is deliberately

concealing these figures, because they might identify perpetrators anxious to disguise their guilt.

94. (87) International opinion bears witness to the fact that civilians were kept as a "human shield" in the refugee camps under UNHCR supervision.

The Rwandan Hutus who were massacred, whether at Wendji, Tingi-Tingi, Kalima, Shabunda, Kisangani or Mugunga, were killed by the people who took them hostage, as human shields. The AFDL authorities have all the evidence necessary to show that the refugees were killed by those who were using them as human shields as soon as they were too tired to continue the journey, or when they refused outright to continue. In all cases, the hostage-takers did not want them to pass on information, and killed them before the liberation forces arrived. For instance, in the Central African Republic, UNHCR compiled a witness report from the testimony of Mr. Gerard Niyonzima Ntagungira, which included the following statement: "... When the ex-FAZ soldiers saw this, they cracked down. They got hold of a Puma helicopter and a light cargo aircraft down at Tingi Tingi, when Colonel Ntiwiragabo arrived he gave orders to destroy everything, and it was from that moment that Flight-Lieutenant Kanyamibwa gave orders to kill the people who were in the local prison, 40 people, and if somebody was in hospital they killed him in the hospital so that he would not give their secrets away to the victorious soldiers ...".

95. So in the case of Wendji, the Democratic Republic of the Congo expects the Team to produce palpable, verifiable facts, not speculation. Having had the opportunity to make excavations, it must hand over the laboratory findings to the body which gave it its mandate, and to the alleged culprits. More precisely, it should have given the names of the officer in command of the troops and our troops as well, enemies of the Interahamwe, former FAZ and former FAR, which as everybody knows had fled to Congo-Brazzaville where they are carrying on their dirty work, instead of indulging in vague generalities and reiterating to the international public grave allegations for which there is no evidence.

Consequently, the Government of the Democratic Republic of the Congo rejects the conclusions of the Investigative Team when it states that in May 1997, over 100,000 Rwandan Hutus were massacred, and that there were massacres in the vicinity of Wendji village perpetrated by AFDL members, supposedly under the effective command of the Rwandan Patriotic Army.

96. (88) After the liberation of the Uvira and Kamanyola camps, the refugees headed westwards, intending to join up with their colleagues from Mugunga and organize themselves. As they could not leave their brothers in the hospitals, they had to take them out of these hospital clinics. The conditions in which they were moved, and any incident which may have happened to them, could not in any way be attributed to AFDL. Some of these sick people had been executed by their companions in misfortune for fear of their plan being unmasked (see the testimony of Mr Niyonzima). Note that the AFDL soldiers were the first to take care of injured and sick people, and had them treated at their own expense.

III.3.5. Destruction of evidence

97. (89) The Team's attempt to cloud the issue is not justified, in view of the fact that the Government of the Democratic Republic of the Congo had nothing to hide. It is therefore astounding that the Team can say what it does, considering that in paragraph 76, it complains of the lack of impartial testimony and firm evidence to arrive at a more complete and accurate understanding of what happened during the five years covered by the investigation.

III.3.6. Conclusions concerning the violation of human rights and of international humanitarian law

III.3.6.1. Violations of human rights by the Zairian Army (FAZ)

98. (90) The international community has maintained a presence in the subregion at all time since the 1960s. The renewed outbreak of human rights violations in the Republic of Zaire grew worse from the 1980s, until AFDL took power. The international community took no interest in any of the abuses committed by the former regime. Today, all the leaders of that army are being generously protected in the countries which claim to respect human rights. The international community is better placed to insist that they answer for their crimes. Everyone knows that in order to stay in power, Mobutu had introduced the policy of "divide and rule". That was the reason for the well-known episode in which he encouraged the expulsion of the Kasai people from Katanga.

III.3.6.2. Massacres committed during inter-ethnic violence

99. (91) The fighting between ethnic groups was the work of those in power under the former regime and their Western allies, and they are the only ones able to reply to these allegations.

III.3.6.3. Killings of civilians during AFDL attacks on camps

100. (92) The aim of the war conducted by AFDL was to bring an end to the chaos prevailing in the country. The liberation army had never carried out any massacres. Unfortunately, for unexplained reasons, the killings committed by the former FAR, the former FAZ, the Interahamwe militias and the Mai-Mai are attributed to the AFDL army. The Government wishes to state that when the camps were being cleared, bullets were aimed at the armed forces, not at civilians. If some civilians died or were hit by the bullets, that was not intentional. They would, unfortunately, be war victims within the meaning of the 1949 Geneva Conventions.

III.3.6.4. Other serious human rights violations alleged to have been committed by AFDL

101. (93) As regards human rights violations taking the form of malnourished children being detained, and wounded patients in a hospital being murdered, this conflicts with what happened on the ground, as our forces included doctors who cared both for the soldiers and for wounded civilians. The AFDL soldiers were the first to give emergency aid to the sick people and to take them to hospital.

As for tortures and murders of nurses in the hospitals, this is a deliberate invention. The Mission would do better to give evidence and state the identity of the people responsible. As regards the denial of access by relief organizations to sick people in the camps for displaced persons containing large numbers of ill and wounded persons, the public will remember that the Mugunga camp, since this is the one in question, contained an entire military arsenal of former FAR, FAZ and Interahamwe, and that an attack on the AFDL soldiers was in preparation there. As proof of this, it took two days to dislodge these forces and they responded savagely. This was a high risk area for the international organizations, which were under the control of the AFDL and which it had an obligation to protect.

III.3.6.5. Killings by militia during the 1996 armed conflict

102. (94) Those who committed these acts are the only ones responsible. It is up to the international community to trace them and try them for their crimes.

III.3.6.6. The commission of crimes against humanity

103. (95) It has just been explained that all the crimes imputed to the AFDL are a deliberate fiction. To allege that AFDL committed a crime against humanity would be a gratuitous accusation. In fact, as we have said, the aim of AFDL was to liberate the Congolese people and to restore peace and respect for human rights in the country and throughout the Great Lakes region. The Team has acknowledged the fact that there were several armed bands which were engaged in looting and in killing both nationals and refugees. AFDL is different from all these forces in the sense that it is a liberation movement, not an ethnic militia. AFDL advocates the liberation of the entire people and respect for their sovereignty. AFDL needed popular support in order to win its struggle.

104. One may put the question whether the international community did not participate in organizing these crimes against humanity by feeding and maintaining genocidal killers who were known for what they were, and by keeping unarmed civilians in the same camp. Again, who is responsible for the thousands of Hutu deaths at Goma and Bukavu in July 1994, when the refugees came there in their masses? Has the international community yet investigated the decision to empty Rwanda of its inhabitants in July 1994? Is it the causes, or the effects, of a disease which ought to be treated?

III.3.6.7. The nature of the massacres

105. (96) The AFDL army had no conceivable reason for killing Rwandan or Congolese Hutus. The aims of AFDL were to take power and to restore the fundamental human rights which had broken down. Several facts mentioned above yield an explanation for the deaths which occurred during this period. We have referred to the hostage-takers who killed their hostages when the latter attempted to gain their freedom and return to their country; fatigue, disease, the Mai-Mai and Interahamwe militias, the FAZ and the former FAR.

III.3.6.8. The right to investigate and prosecute

106. (97) The perpetrators of the crimes referred to by the Mission are mentioned in the previous paragraph and are living in the rich countries, where only the international community can arrest and try them. Deprived of any instrument for prosecuting criminals when extradition agreements about them have to be signed with countries which have so far shown great reluctance to do so, the international community has to create a mechanism to try the criminals. The Government of the Democratic Republic of the Congo is willing to try any of its nationals who are guilty or were implicated, from afar or otherwise, in these alleged massacres. In order to do so, it requests aid from the international community to reform, restructure and rebuild its judicial system.

III.3.6.9. The obligation to compensate

By planning Operation Turquoise, by providing sustenance for the Interahamwe soldiers and militia together with unarmed civilians for more than two years and by taking over the Zairian security force in the camps, the international community and, in particular, the United Nations, gave their backing to all the consequences of these decisions. Consequently, it has the duty not only to compensate the victims of the armed conflicts and the victims of human rights violations, but also to repair the infrastructure damaged as a result of the presence of Rwandan refugees in the Democratic Republic of the Congo (see General Assembly resolution 52/169 B).

III.4. Evaluation of the recommendations

107. The primary objective of AFDL in taking up arms was, and still is, to build a State under the rule of law and to eliminate impunity in all its forms. Therefore, any person who has been responsible for violent acts or violations of human rights must be denounced, prosecuted, tried and punished.

108. Assuming the incomplete nature of the investigations of the United Nations Investigative Team, the President of the Democratic Republic of the Congo had hoped, at the time of its final withdrawal, that the mission would return to complete its work or that another would be established.

109. Everyone is aware of the slowness, which will ultimately be interpreted as incompetence, of the International Criminal Tribunal for Rwanda established by the United Nations to try those responsible for the Rwandan genocide. To propose that it be extended, as the Investigative Team recommends, is tantamount to perpetuating impunity. The Congolese Government proposes that those responsible for the Rwandan genocide, having perpetrated massacres in Congolese territory and then apparently returned to Rwanda or infiltrated other countries, be tried by the International Criminal Tribunal for Rwanda. As for the leaders of the Mobutu regime who were involved in violations of human rights and humanitarian law, the Government requests that they be extradited and tried by the courts of the Democratic Republic of the Congo. In that regard, the Government of the Democratic Republic of the Congo requests that the United Nations help it to reform its judicial system with a view to judging all criminals.

110. With regard to the Rwandan Hutus who died of disease and fatigue in July 1994, the Congolese Government hopes that those responsible for the disaster on Congolese territory, that is, those who took the decision to clear out the country, and all their accomplices - in this case, the French and the Rwandan leaders at the time - will be identified and tried by an ad hoc tribunal.

111. Since the United Nations Investigative Team has already completed and published its report on the international air waves, the Congolese Government proposes that the sensitive information which it holds and which the Government believes is threatening to life and security should be made available to the mission of inquiry initiated by the Organization of African Unity, which will be able to carry out a more thorough investigation. The choice of OAU is appropriate because of its neutrality during the events that are the subject of the investigation.

112. The report is biased because it was unable to single out the responsibility of the United Nations, in particular the Office of the Secretary-General and the Security Council, for their passivity in assisting Rwanda during the period of genocide and for sending Operation Turquoise with the objective of clearing Rwanda of its population and forcing them into the eastern part of the Democratic Republic of the Congo. The same is true of the failure to demilitarize the camps, which is the origin of the presumed massacres of Hutus in the Democratic Republic of the Congo.

IV. REACTIONS TO THE ANNEXES TO THE REPORT OF THE UNITED NATIONS INVESTIGATIVE TEAM IN THE DEMOCRATIC REPUBLIC OF THE CONGO ON THE ALLEGED MASSACRES OF RWANDAN HUTU REFUGEES

113. In this part, the Government presents its reactions to the facts as presented by the United Nations Investigative Team.

114. The Congolese Government thanks the United Nations Investigative Team for agreeing with its conclusion that since its sources were not credible, their assertions could not constitute reliable evidence on which the Democratic Republic of the Congo could be judged.

IV.1. March 1993 to October 1996

115. The origins of inter-ethnic violence in this part of the Democratic Republic of the Congo date back to the colonial period. Ethnic problems under Belgian rule were handled with some negligence and were perpetuated under the Second Republic.

116. These conflicts were aggravated by the massive flow of Rwandan refugees into Congolese territory in July 1994. The political and military authorities responsible for the human rights violations committed during this period are solely responsible for their crimes. The international community must take steps to bring them to justice and punish them.

117. The Congolese Government will not dwell on historical considerations to explain the origins of the conflicts in the eastern part of the Republic, but

rather will discuss to what extent it is responsible for the presumed massacres of Hutu refugees and massive violations of human rights.

IV.2. October 1996 to December 1997

118. AFDL troops, by taking up arms, had no intention of massacring anyone, but rather of liberating the country from the dictatorship of Mobutu and all the forces of evil that had taken the people hostage. These forces were the Zairian Army (FAZ), the fleeing Rwandan forces and the Interahamwe militia.

IV.2.1. Alleged attacks on the refugee camps

119. The Congolese Government refutes all the unjust accusations of the United Nations Investigative Team of alleged attacks on refugee camps. The Congolese Government considers that since the outbreak of the war of liberation for control of the national territory, AFDL troops attacked the camps to liberate the refugees held hostage by armed gangs who were using them as a human shield. This allowed for the massive, voluntary return of the freed refugees to their country of origin.

120. During this operation, about a million persons returned to their country, thus clearing an area of operations.

121. As for the figures cited by the United Nations Investigative Team, the Democratic Republic of the Congo hopes it will now be provided with reliable statistics on the alleged victims referred to in the report.

IV.2.2. Alleged massacres during the advance of AFDL troops

122. In the annexes, the mission alludes to the alleged massacres during the advance of AFDL troops. On this point, we should like to draw to the attention of the United Nations that the war of liberation led by AFDL, like all armed conflicts the past quarter of a century, was highly publicized. All the military objectives and towns to be taken were determined in advance. Therefore, the refugees, the Congolese population and all the armed troops who opposed the advance of the AFDL forces were aware of the itinerary to be followed by these forces.

123. The Congolese civilian population and a large part of the Zairian Army welcomed the AFDL troops as liberators. Those who fled included all the armed gangs hostile to the new power, who took refuge in neighbouring countries and are now under the protection of UNHCR.

124. Deaths did occur, undoubtedly because of the war, thirst, hunger, fatigue, disease and epidemics. These cases were recorded by UNHCR and was publicized throughout the world through the media.

125. We must denounce, for example, certain testimonies that were accepted without foundation. One case is that of the town of Goma, which was visited by the national and international press less than three hours after its liberation.

126. The Investigative Team, as reported on page 17 of the annexes, had interrogated a witness, who had reported that the AFDL soldiers had asked where Hutu men could be found, in order to kill them. This question shows that this so-called witness was not present during the events and knew nothing about what was going on, for on that date (1 November 1996), all the Hutus had taken refuge in the Mugungo camp, following a "mopping up" operation which had been led by the Zairian Army (FAZ).

127. As for the testimony of a child soldier who had killed a non-combatant for personal reasons, it may be recalled that on that date, the former FAZ soldiers had opened all the military ammunition depots to the population. Did the Commission determine whether the child soldier was an AFDL combatant or a civilian disguised as a soldier?

128. The claim that an ex-FAZ soldier was killed is a contradiction to the extent that the number of former FAZ soldiers captured by AFDL and who became members of the Congolese Armed Forces is an eloquent testimony of the Government's willingness to restore the state of law in our country. No AFDL combatant was motivated by acts of vengeance or blind reprisal against civilians or members of enemy armed forces.

129. These testimonies adequately demonstrate that the statements cited have no basis in fact and are indeed inventions, for today the majority of officers in our army are former members of FAZ whom we have re-trained.

IV.3. Alleged serious violations of human rights and humanitarian law following the closing of the camps

130. Far from seeking to refute all the unverified allegations of the Team, the Government wishes to request the Commission to confirm, in the light of its report (page 18, line 97), whether after the voluntary return of 600,000 refugees in question, 400,000 others, having fled into forest, were killed or not. Since UNHCR has all the statistics, it can testify objectively and find out how many were repatriated in the Tingi-Tingi, Kisangani, camps ... how many are currently in neighbouring countries. Of those, it must be determined how many died, as mentioned above, from illness, hunger, thirst or fatigue, and how many were killed by murderers.

131. From reading these annexes, and from the report of the United Nations Commission, it is clear that these alleged violations of human rights and humanitarian law are completed unfounded. It is therefore difficult to verify the sources.

132. The Congolese Government will not now open a new discussion on international humanitarian law. The various relevant conventions are sufficiently eloquent on the subject and have not been respected by the United Nations. It therefore requests the United Nations Commission on Human Rights not to grant a monopoly unilaterally on the matter. The Government of the Democratic Republic of the Congo reiterates that, given the persistence of these allegations and its willingness to put an end to the culture of impunity, it is desirous of carrying out its own inquiry on the incidents identified, relying on its own judicial system and resources. However, it would like to have the

material support of the international community, which would allow it to reform, restructure and rebuild its judicial system and carry out the task it wishes to undertake.

The Government of the Democratic Republic of the Congo welcomes the expression of good will by the United Nations as reflected in some of the recommendations of the report; according to these recommendations, the international community should support programmes for the compensation and rehabilitation of Congolese victims of war and violations of human rights caused by the flow of armed refugees into its territory. The Government hopes that the United Nations will contribute materially to the establishment of programmes intended to reduce ethnic tensions and promote respect for the essential dignity and equal rights of all persons affected by this crisis in the Great Lakes region.